

issues by eliminating those that can be." See Advisory Committee Notes to 1970 Amendments to Fed. R. Civ. P. 36. "The purpose of a request for admissions generally is . . . to force the opposing party to formally admit the truth of certain facts, thus allowing the requesting party to avoid potential problems of proof." *Hurt v. Coyne Cylinder Co.*, 124 F.R.D. 614, 615 (W.D. Tenn. 1989). What is clear from the arguments set forth in Defendant Peterson's Response is that it does not want to narrow the issues for trial at all. The State's April 20, 2007 requests to admit seek to accomplish nothing more than what Rule 36 expressly allows.

Defendant Peterson has the burden of showing this Court that the State's requests are insufficient. See *Audiotext Communications Network, Inc. v. US Telecom, Inc.*, 1995 WL 625744, *5 (D. Kan. Oct. 5, 1995) (citations omitted) ("The burden of showing the discovery request is burdensome is upon the objecting party. . . . Conclusory allegations in the objections and the memorandum of [the responding party] do not carry this burden."). Defendant Peterson completely fails to carry its burden and demonstrate why the definitions in the State's requests -- and, therefore, the requests themselves -- do not comport with the legal principles underlying Rule 36. The State's requests to admit are proper under Rule 36, and Defendant Peterson should be required to respond to them plainly and without objection.

B. Defendant Peterson's objection that the State's requests are compound should be overruled

Defendant Peterson argues that each of the State's requests is compound and unanswerable. A reading of the State's requests proves otherwise. The State's requests are clear on their face and ask for admissions of singular facts or the application of singular facts to law. Even assuming *arguendo* that Defendant Peterson's assertion that 12 of the 13 requests are compound were well-taken, which the State expressly denies, Defendant Peterson would not be relieved from its obligation to respond to those requests. "That certain requests could have been

separated into two or more separate requests does not necessarily make those requests improper or otherwise objectionable." *See Audiotext*, 1995 WL 625744, *5 (citation omitted).

"Compound requests that are capable of separation into distinct components and that follow a logical or chronological order . . . should be denied or admitted in sequence with appropriate designation or qualification by [the respondent] in its response." *See id.*

Defendant Peterson's reliance on *Diederich* and *Audiotext* for the proposition that "if any one of the facts interwoven into a request can be denied, the entire request can properly be denied" is misplaced. In fact, in *Diederich*, the court addressed general objections as to undefined terms. *See Diederich v. Department of Army*, 132 F.R.D. 614 (S.D.N.Y. 1990). The court held that "it is entirely within the discretion of the court as to what level of expression and detail should be tolerated for each individual case." *See id.* at 619. The court noted that even though specificity and detail is necessary and appropriate in requests for admissions, "[t]his does not mean that defendant is not expected to qualify its responses." *Id.* Indeed, the plain language of Rule 36(a) requires as follows:

A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.

Defendant Peterson is familiar with the facts of this case. Blanket objections with no attempt to admit the true statements in the State's request to admit should not be allowed in this case.

Along those lines, Defendant Peterson's reliance on *Audiotext* is also misplaced. The actual language used by the *Audiotext* court is: "[w]here it is evident that multiple interdependent issues are contained in one request, [the answering party] may deny the entire statement if one fact, on which the remainder is premised, is denied . . ." *See Audiotext*, 1995 WL 625744, *6

(emphasis added). Indeed, *Audiotext* goes on to say that "[a] compound request (seeking admission of multiple facts) or an ambiguous one should be answered as far as possible with appropriate qualification or explanation, rather than objected to entirely." *See Audiotext*, 1995 WL 625744, *6 (citation omitted) (overruling objections regarding the compound nature of the requests). Defendant Peterson has failed to demonstrate that there is a statement that it denies upon which the remainder of the requests are premised. In fact, Defendant Peterson fails almost completely (with perhaps the exception of the State's definition of "phosphorus")¹ to address the substance or alleged inaccuracies of any of the State's definitions. Instead of establishing how the State's definitions render the remainder of the requests inaccurate, it hides behind its unfounded blanket objections.

What is perplexing about Defendant Peterson's responses to both the State's requests to admit and its motion to determine sufficiency of Defendant Peterson's responses thereto is the fact that it does not just outright deny the requests. If the State's definitions render the requests false, then all Defendant Peterson had to do was to deny them. This, of course, is not what Defendant Peterson did, and this certainly was not the effect of the State's definitions. Defendant Peterson is merely attempting to see if one of its arguments will stick. They will not. Defendant Peterson's responses to the State's requests are insufficient. Defendant Peterson should be required to plainly respond to the State's requests without objection.

C. Defendant Peterson's attempt to characterize each of the State's definitions to the extreme should not be countenanced

Defendant Peterson attempts to convince the Court it is an "impossibility, or at least an overly burdensome impracticality" to respond to the State's requests to admit when one "look[s]

¹ For the reasons set forth in the State's Motion, the State's definition of "phosphorus" is entirely appropriate, and Defendant Peterson's objection thereto should be overruled.

beyond the words" of the requests. *See* Peterson's Response, pp. 3-4. Defendant Peterson claims that there are 14,000 different combinations of facts that arise from the State's requests. *See id.* at 13. That Defendant Peterson's interpretation of the State's requests requires "looking beyond the words" is telling. "[W]hen the purpose and significance of a request are reasonably clear, courts do not permit denials based on an overly-technical reading of the request." *Tuvalu v. Woodford*, 2006 WL 3201096, *7 (E.D. Cal. Nov. 2, 2006) (citation omitted); *see also Lamoureux v. Genesis Pharmacy Services, Inc.*, 226 F.R.D. 154, 163 (D. Conn. 2004) ("Discovery is not the place for overly-nuanced, metaphysical distinctions. Adopting Socrates' 'the only true wisdom is in knowing you know nothing,' one could reasonably deny all requests for admission. Our system of discovery, understandably, does not permit such a practice") (emphasis in original).

While at first glance Defendant Peterson's approach poses what might be an interesting exercise, when boiled down to its essence, it is absurd and reflects the lengths Defendant Peterson will go to avoid giving straightforward responses to straightforward requests. Defendant Peterson's efforts to take each word (and its definition) to the extreme are not reasonable and should not be sanctioned by this Court. Even the simplest sentence can be made complicated by including the definition of each word. Take, for example, the following sentence: "The dog chased the cat up the tree." In Defendant Peterson's world, this would be impossible to either admit or deny. Under Defendant Peterson's logic, this simple sentence would be so complex with so many varying possibilities that it would be an unanswerable or overly burdensome request to admit:

The ["highly variable domestic mammal (*Canis familiaris*) closely related to the gray wolf"]² ["cause[d] to depart or flee"]³ the ["carnivorous mammal (*Felis catus*) long domesticated as a pet and for catching rats and mice" or "any of a family (Felidae) of carnivorous usually solitary and nocturnal mammals (as the domestic cat, lion, tiger, leopard, jaguar, cougar, wildcat, lynx, and cheetah)"]⁴ up the ["woody perennial plant having a single usually elongate main stem generally with few or no branches on its lower part"]⁵.

Further deconstruction of this sentence, according to Defendant Peterson's logic, would produce endless possibilities. The American Kennel Club recognizes approximately 147 breeds of dogs.⁶ This number does not take into account hundreds of mixed-breed dogs. Further, the Cat Fanciers' Association recognizes that there are at least 39 pedigreed breeds of domestic cats.⁷ Again, this number does not take into account any mixed-breed cats or the wild cats identified above. Finally, one would be faced with identifying all varieties of trees, which number in (at least) the hundreds. Thus, it is clear that even the simplest, most direct sentence could be transformed into an "incomprehensible" request to admit that would require "a highly technical and detailed discussion addressing each of the numerous alleged facts, assumptions and arguments built into" it. See Peterson's Response, p 3.

² See Merriam-Webster Online Dictionary [<http://www.merriam-webster.com/dictionary/dog>] (emphasis added).

³ See Merriam-Webster Online Dictionary [<http://www.merriam-webster.com/dictionary/chased>].

⁴ See Merriam-Webster Online Dictionary [<http://www.merriam-webster.com/dictionary/cat>].

⁵ See Merriam-Webster Online Dictionary [<http://www.merriam-webster.com/dictionary/tree>].

⁶ See American Kennel Club -- Complete List of Breeds [http://www.akc.org/breeds/complete_breed_list.cfm].

⁷ See The Cat Fanciers' Association -- Breeds [<http://www.cfainc.org/breeds.html>].

Contrary to Defendant Peterson's argument, what the State has accomplished by carefully defining the terms used in its requests is to put the parties on the same page. "The requesting party bears the burden of setting forth in necessary, but succinct, detail, the facts, events or communications to which admission is sought." *Audiotext*, 1995 WL 625744, *2. Despite Defendant Peterson's argument, there is and can be no ambiguity or vagueness with defining terms in a like manner to various statutory provisions. Defendant Peterson, however, makes the conclusory statement that the State's use of statutory definitions "does not resolve the difficulty in responding to a Request employing this definition." Peterson Response, p. 8. However, even where the State intends to use words in their ordinary meaning, Defendant Peterson itself looks to statutory definitions to understand their meaning. A prime example of this is Defendant Peterson's objection to the use of the word "release" because, although not used in that capacity, it has a statutory meaning under CERCLA. The State intended that this word be interpreted in accordance with its ordinary meaning. Still, Defendant Peterson objects. Defendant Peterson cannot have it both ways.

Defendant Peterson's logic is circular, and its objections without merit. Defendant Peterson's attempts to avoid admitting the facts set forth in the State's requests by complicating and convoluting the meanings of the State's requests should not be accepted by this Court. Defendant Peterson should be required to plainly respond to the requests without objection.

D. Rule 36 expressly provides for application of facts to law

Peterson further argues that the State's requests seek admissions of conclusions of law and, therefore, are improper. To the contrary, the State's requests comply with the letter of Rule 36. Rule 36 provides, "A party may serve upon any other party a written request for the admission . . . of the truth of any matters within the scope of Rule 26(b)(1) set forth in the

request that relate to statements or opinions of fact or of the application of law to fact"

(Emphasis added.) "Requests for admission . . . are not objectionable even if they require opinions or conclusions of law, as long as the legal conclusions relate to the facts of the case."

See Audiotext, 1995 WL 625744, *6 (citation omitted). "Opinions on abstract propositions of law are still objectionable, but requests seeking admission of the truth of statements applying law to the facts of the case are specifically sanctioned." *See id.*, at *6 (citations omitted) (finding that the requests at issue seek admissions of matters involving application of law to relevant facts and overruling the responding party's objections). Despite Defendant Peterson's mischaracterizations of the State's requests, this is not a case where the State has just asked Defendant Peterson to admit to liability. Rather, the State has asked Defendant Peterson to admit the application of specific facts to certain elements of its proof. As noted above, Rule 36 expressly provides for the use of requests for admission to accomplish this purpose. Defendant Peterson should be required to respond plainly and without objection to the requests.

E. The objections Defendant Peterson failed to address in its Response should be overruled

1. Defendant Peterson's General Objections not specifically incorporated into and identified in its responses should be overruled

Defendant Peterson did not address the merits of its general objections not specifically incorporated into and identified in its responses -- perhaps a concession that such objections are without merit. In each and every response given by Defendant Peterson, the response is "[s]ubject to the foregoing objections and its General Objections." *See* Ex. 2 to State's Motion. Objections to requests for admissions "must be directed and specifically related to a specific request. General objections without any reference to a specific request to admit are meritless." *Henry v. Champlain Enterprises, Inc.*, 212 F.R.D. 73, 78 (N.D.N.Y. 2003) (citation omitted); *see*

also Swackhammer v. Sprint Corp. PCS, 225 F.R.D. 658, 661 (D. Kan. 2004) (holding that General Objections to interrogatories where "the objecting party makes no meaningful effort to show the application of any such theoretical objection" are meritless on their face). Accordingly, the General Objections not specifically identified and/or incorporated in the response to the request should be overruled.

2. Defendant Peterson's temporal objection should be overruled

Defendant Peterson has objected to each of the State's 13 requests on the ground that it is "overly broad and burdensome in that it is not limited in scope by a relevant or reasonable time period." Defendant Peterson also failed to address this objection in its Response. Accordingly, this objection should be overruled.

Conclusion

For the reasons set forth above and as set forth in the State's Motion, the State's Motion [DKT # 1249] should be granted in its entirety.

Respectfully Submitted,

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